

CHAPTER 5

AN ACT

HB 4068

Relating to food banks; and declaring an emergency.
Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2012 Act is added to and made a part of ORS 616.205 to 616.385.

SECTION 2. (1) As used in this section:

(a) "Bycatch" means commercially caught fish of a species that was not targeted for harvesting.

(b) "Food bank" means a surplus food collection and distribution system operated and established to assist in bringing donated food to nonprofit charitable organizations and individuals for the purpose of reducing hunger and meeting nutritional needs.

(c) "Hold fish" means egg-bearing fish harvested as part of a species conservation, rehabilitation or enhancement program.

(d) "Reclaimed fish" means bycatch, hold fish or seized fish that a federal or state agency, or other persons acting pursuant to federal or state law, provides to a food bank.

(e) "Seized fish" means illegally caught fish confiscated by a federal or state agency.

(2) Notwithstanding ORS 616.210, if a food bank supplies reclaimed fish to a food establishment, payment by another food bank of all or part of the cost of the food establishment services does not cause the manufacturing, production, processing, packing, possession and holding of the reclaimed fish by the food establishment to be for purposes of sale or other commerce if:

(a) The food establishment wraps or packages the reclaimed fish in a manner not designed for retail sale; and

(b) Except as provided in subsection (5) of this section, the food establishment supplies the wrapped or packaged reclaimed fish only to food banks.

(3) Notwithstanding ORS 616.210, if a food bank supplies reclaimed fish to a food establishment, payment to the supplying food bank or the food establishment by another food bank of all or part of the cost of the food establishment services is not a sale or purchase of the reclaimed fish if:

(a) The food bank that supplied the reclaimed fish and each nonsupplying food bank that paid all or part of the cost of the food establishment services receives a share of the processed reclaimed fish as mutually determined by the food banks; and

(b) All food banks receiving a share of the processed reclaimed fish repackaged, use or distribute the reclaimed fish only:

(A) For food bank purposes; and

(B) Without charge to the recipient.

(4) Payment by a food bank of all or part of the cost to process reclaimed fish may qualify under subsections (2) and (3) of this section regardless of whether the payment of costs occurs before, during or after the provision of processed reclaimed fish to the paying food bank.

(5)(a) A processing agreement between a food establishment and a food bank may provide for the food establishment to retain a mutually determined portion of reclaimed fish or to retain the byproducts of reclaimed fish. Notwithstanding ORS 616.210 and except as provided in paragraph (d) of this subsection, food establishment retention of a portion of or of byproducts of reclaimed fish supplied by a food bank is not a sale, dispensing or giving of food by the food bank to the food establishment.

(b) Notwithstanding ORS 616.210 and except as provided in paragraph (d) of this subsection, the provision of processed reclaimed fish to a food bank by a food establishment retaining a portion of or byproducts of the reclaimed fish is not a sale, dispensing or giving of food by the food establishment to the food bank.

(c) Food establishment retention of a portion of or byproducts of reclaimed fish under this subsection may include, but need not be limited to, retention for the purpose of offsetting all or part of the cost of food establishment services.

(d) This subsection does not apply to any retention of a portion of or byproducts of reclaimed fish that is contrary to federal law, or to federal or state agency restrictions or prohibitions, regarding the disposition of reclaimed fish or the byproducts of reclaimed fish.

(e) Any portion of or byproducts of reclaimed fish retained by a food establishment are subject to ORS 616.205 to 616.385.

(6) The distribution of reclaimed fish in this state by a food bank for food bank purposes without charge to the recipient is not distribution in commerce for purposes of ORS 616.215 (4).

(7)(a) Except as provided in paragraph (c) of this subsection, processed reclaimed fish that a food establishment supplies to a food bank under this section is exempt from labeling requirements under ORS 616.205 to 616.385. The exemption granted under this paragraph is conditioned upon the reclaimed fish not being adulterated as described in ORS 616.205 to 616.385 at the time the food bank takes possession of the reclaimed fish from the food establishment.

(b) Except as provided in paragraph (c) of this subsection, processed reclaimed fish that a food bank uses or distributes for food bank purposes without charge to the recipient, including but not limited to reclaimed fish that is repackaged or relabeled by the food bank prior to use or distribution, is exempt from labeling

requirements under ORS 616.205 to 616.385. The exemption granted under this paragraph is conditioned upon the reclaimed fish not being adulterated as described in ORS 616.205 to 616.385 at the time the food bank uses or distributes the reclaimed fish.

(c) Processed reclaimed fish described in paragraphs (a) and (b) of this subsection is not exempt from any labeling requirement under ORS 616.205 to 616.385 regarding:

(A) The name and address of the food establishment;

(B) The common or usual name of the product;

(C) Ingredients;

(D) Manufacturing date or lot number; or

(E) Instructions for preservation, storage or other food safety measures.

SECTION 3. Section 2 of this 2012 Act applies to reclaimed fish that a food bank supplies to a food establishment on or after the effective date of this 2012 Act.

SECTION 4. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

Approved by the Governor February 27, 2012

Filed in the office of Secretary of State February 27, 2012

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